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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Application of Open Network )  
Architecture and )  
Nondiscrimination Safeguards )  
to GTE Corporation )

CC Docket No. 92-256

**COMMENTS OF THE INFORMATION  
TECHNOLOGY ASSOCIATION OF AMERICA**

The Information Technology Association of America ("ITAA"), formerly known as ADAPSO, hereby submits the following comments in response to the Notice of Proposed Rulemaking which the Commission issued in the above-captioned proceeding on December 2, 1992.<sup>1</sup>

I. **INTRODUCTION AND SUMMARY OF POSITION**

ITAA is the principal trade association of the computer and software services industry. Its member companies provide the public with a wide variety of computer services, including local batch processing, software design and support, systems integration, and network-based information services. Within this latter category are data distribution, information management, electronic mail,

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<sup>1/</sup> See Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation, CC Docket No. 92-256, FCC 92-495 (released Dec. 2, 1992) [hereinafter "Notice"].

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timesharing, and other remote access data processing services. In delivering these computer services to their customers, ITAA's members are totally dependent upon the communications services provided by regulated common carriers such as GTE Corporation ("GTE"). Because of its members' dependence on the nondiscriminatory availability of high quality and reasonably priced common carrier communications services, ITAA has actively participated in numerous Commission proceedings involving the formulation and implementation of Open Network Architecture ("ONA").

ITAA endorses the Commission's tentative conclusion that the public interest will be served by applying to GTE the same ONA requirements that govern the participation of the Bell Operating Companies ("BOCs") in the enhanced services marketplace. If there were ever any question that GTE possessed the ability and incentive to discriminate against competing enhanced service providers prior to its merger with the Contel Corporation ("Contel"), there should be no doubt today, now that GTE has become one of the largest local exchange carriers.

ITAA has consistently supported regulatory safeguards capable of preventing local exchange carriers from discriminating against independent enhanced service providers. Although structural separation is plainly the most effective means of preventing anticompetitive

discrimination, ITAA supports the application of existing ONA requirements to GTE. Given the often-noted inadequacies of ONA as a safeguard against discrimination and as a means of promoting the efficient use of the local exchange network, ITAA can conceive of no justification for further weakening ONA as it applies to GTE.

II. BY VIRTUE OF ITS SIZE AND THE SCOPE OF ITS OPERATIONS, GTE POSSESSES THE SAME MONOPOLY POWER AS THE BOCS IN PROVIDING LOCAL EXCHANGE SERVICE AND SHOULD THEREFORE BE TREATED THE SAME AS THE BOCS.

ITAA concurs in the Commission's tentative conclusion that the increased scope of GTE's operations following its merger with Contel, together with its increased financial resources, enhance GTE's ability and incentive to discriminate against competing information service providers. As the Commission itself has recognized, GTE resembled the BOCs in terms of annual revenues, number of access lines, and exchanges served, even before its merger with Contel.<sup>2</sup> Now, as a result of the merger, GTE has gained approximately \$3.4 billion in additional revenues, 2.7 million additional access lines, and 1700 additional local exchanges.<sup>3</sup> When measured against the BOCs, GTE now ranks second in total operating revenues,

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2/ Amendment of Sections 64.702 of the Commission's Rules and Regulations, 2 FCC Rcd 3072, 3099 (1987).

3/ Notice at ¶ 8 (citing FCC Common Carrier Statistics, Table 1.1 (1990/91 ed.)).

fourth in the number of access lines, and first in the number of exchanges.<sup>4</sup>

As ITAA and others argued in Computer II, and as the Commission itself tentatively found, GTE should have been treated the same as the BOCs and required to provide enhanced services through a separate subsidiary prior to its merger with Contel.<sup>5</sup> Indeed, the Commission has never really provided a rational basis for exempting GTE from Computer II's separate subsidiary requirement. The United States Court of Appeals for the Ninth Circuit recognized as much in its decision vacating the Commission's Computer III orders. There, the Court found that there has been "no coherence in the Commission's policy shifts in deciding which carriers to subject to separation requirements."<sup>6</sup>

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4/ Id. at ¶ 8 n.27 (citing USTA Holding Company Report (1991)).

5/ See Amendment of Section 64.702 of the Commission's Rules and Regulations, 77 F.C.C.2d 384 (1980) (Computer II), modified on recon., 84 F.C.C.2d 50, 82-83 (Computer II Reconsideration Order), modified on further recon., 88 F.C.C.2d 512 (1981) (Computer II Further Reconsideration Order), aff'd sub nom. Computer & Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983).

6/ California v. FCC, 905 F.2d 1217, 1236 (9th Cir. 1990). The Court rhetorically questioned why, in Computer II, a carrier as large as GTE was suddenly deemed to have lost the ability to cross-subsidize its unregulated activities. As the Court pointed out, the Commission's final decision in Computer II reversed its tentative conclusion that GTE should be subject to structural separation. Id. at n.23.

Only now has the Commission finally come to grips with the fact that GTE is not unlike the BOCs, i.e., it is "one of the largest local exchange carriers in the United States."<sup>7</sup> Thus, whatever question there may have been about GTE's ability to discriminate against enhanced service providers prior to the Contel merger, there should be no such doubt now. GTE should therefore be treated the same as the BOCs and subject to the same ONA requirements.

III. GTE SHOULD BE SUBJECT TO THE SAME ONA REQUIREMENTS AS THE BOCs.

In urging the Commission to apply the same ONA requirements to GTE as apply to the BOCs, ITAA finds itself in a somewhat uncomfortable position. As the Commission is undoubtedly aware, ITAA has repeatedly criticized ONA -- as implemented by the BOCs and approved in CC Docket No. 88-2 -- as a woefully inadequate substitute for structural separation. Although ONA once promised to be an effective means of preventing anticompetitive discrimination and promoting the efficient use of the local exchange network, it has failed in both respects.

The ONA plans now being implemented by the BOCs have not weakened the carriers' local exchange bottleneck, nor have they diminished the BOCs' ability and incentive to use their control over the local exchange for their

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<sup>7/</sup> Notice at ¶ 8.

competitive advantage in the enhanced services marketplace. As the record of CC Docket No. 88-2 amply demonstrates, ONA will result in only minimal unbundling. For the most part, existing services have merely been reclassified as Basic Service Elements ("BSEs") and Basic Serving Arrangements ("BSAs"). Moreover, the carriers have been largely unresponsive to enhanced service provider requests for ONA services. And, as a result of the Commission's decision in CC Docket No. 89-79, ONA services have been priced well beyond the economic reach of most enhanced service providers.<sup>8</sup> Indeed, the BOCs themselves have conceded the absence of enhanced service provider demand for their ONA offerings. Despite the well-intentioned goals of ONA, enhanced service providers have, in Pacific Bell's words, "remained on the sidelines."<sup>9</sup>

Although ONA is thus a far-from-effective safeguard against anticompetitive discrimination,<sup>10</sup> it is all that

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<sup>8/</sup> The vast majority of commenters in CC Docket No. 89-79 concurred in ITAA's assessment that, as currently formulated, there is little demand for ONA among its intended beneficiaries, enhanced service providers. See, e.g., Comments of ADT Security Systems, Inc. at 3-4 (Sep. 30, 1992); Comments of the Information Industry Association at 3 (Sep. 30, 1992); Additional Comments of Wiltel, Inc. at 2 (Sep. 2, 1992).

<sup>9/</sup> Comments of Pacific Bell, CC Docket No. 89-79, at 4 (Sep. 30, 1992).

<sup>10/</sup> As recently as last month, the Commission further weakened ONA as a safeguard against anticompetitive discrimination by exempting Operations Support Systems (Footnote 10 continued on next page.)

enhanced service providers now have left. The Commission has relieved or is in the process of relieving all of the BOCs from structural separation, and GTE never was subject to the separate subsidiary requirements of Computer II. ITAA therefore finds itself compelled to support the application to GTE of the same ONA requirements that apply to the BOCs. Given the inadequacies of ONA and given the very real need for some level of protection against anticompetitive abuse, there is no justification whatsoever for waiving or relaxing any ONA requirements for GTE. Indeed, if the Commission were inclined to take any action with respect to modifying ONA, it should avoid the mistakes it made with the BOCs and require GTE to implement a truly open network architecture.

The small, rural nature of some of GTE's local exchange operations does not justify relaxing any ONA requirements. By requiring GTE to implement ONA throughout these service areas, the Commission will ensure that more Americans receive the benefits of ONA. Making GTE comply with the same ONA requirements as apply to the BOCs will thus give ONA greater national scope and will make BSEs and

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(Footnote 10 continued from previous page.)  
that are used in conjunction with Complementary Network Services from ONA's equal access requirement. See Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, Phase I, FCC 95-535 (released Jan. 4, 1993).

BSAs more widely available. And, there is the possibility that GTE, unlike the BOCs, will implement ONA in a truly unbundled and innovative manner, thereby benefiting consumers.

Nor does the fact that some of GTE's operations are geographically dispersed justify waiving or relaxing specific ONA requirements. In each franchise area in which it operates, GTE possesses the size and strength to discriminate against competing enhanced service providers. The need to guard against anticompetitive abuse thus exists without regard to the geographically dispersed nature of GTE's operations.

Arguments that ONA is too burdensome for GTE are similarly hollow. Plainly, ONA has not burdened the BOCs, which are now vigorously defending it before the U.S. Court of Appeals for the Ninth Circuit. The Commission's other Computer III safeguards -- the customer proprietary network information rules, the network information disclosure rules, and the nondiscrimination reporting requirements -- have similarly been embraced by the BOCs. It is difficult to imagine how these safeguards could be deemed unduly onerous for an organization of the size and with the resources of GTE.

Although ONA has not been an unqualified regulatory success, ONA could -- if effectively implemented as

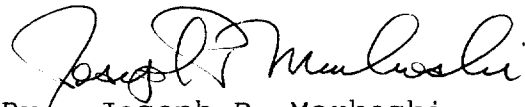
originally envisioned by the Commission -- bring the public significant benefits. If GTE were to offer truly unbundled network services, competition would be protected and new opportunities would be created for enhanced service providers to offer, and customers to receive, an ever-increasing variety of enhanced services in a more efficient manner.

IV. CONCLUSION

For all of the reasons set forth above, the Commission should treat GTE the same as the BOCs and apply to GTE the same ONA requirements that apply to the BOCs.

Respectfully submitted,

INFORMATION TECHNOLOGY ASSOCIATION  
OF AMERICA



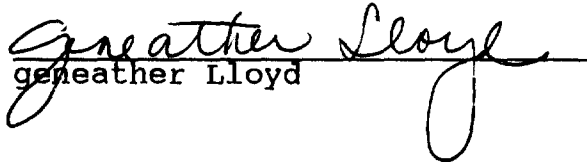
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February 22, 1993

CERTIFICATE OF SERVICE

I, geneather Lloyd, hereby certify that copies of the foregoing Comments of the Information Technology Association of America were served by hand or by First-Class United States mail, postage prepaid, upon the parties appearing on the attached service list this 22nd day of February, 1993.

  
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